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# VIRGINIA LAW REGISTER.

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EDITED BY W. M. LILE.  
GEORGE BRYAN, ASSOCIATE EDITOR.

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WITH this, the closing number of Volume VIII, the editorial conduct of the VIRGINIA LAW REGISTER passes from my hands. Beginning with the May number, and Volume IX, Mr. George Bryan, for some time my efficient associate, will assume sole editorial charge.

In thus retiring from the editorship of the REGISTER, I do not seek respite from professional labors. On the contrary, the step is made necessary by the demands of other professional work, long since planned, but which languishes, and must continue to languish, under present conditions. My connection with the journal began with its initial number, eight years ago. During the greater portion of this time I have performed all the duties of editor, unassisted. The conduct of a local law journal—the financial returns from which warrant little expenditure for clerical assistance—means not only editorial supervision and the preparation of editorial matter (in themselves delightful recreation for any enthusiastic lawyer), but much labor in the revision of careless copy supplied by others, the correction of proofs, and the conduct of an extensive correspondence. Out of this correspondence have grown many valued friendships, but it has developed to proportions that make it a serious burden. Editors are presumed to have all the law at command, and it is not unreasonable that subscribers in difficulties should draw upon the editorial reservoir. But howsoever laborious, the conduct of the journal has been a grateful task, and is now laid aside with genuine regret.

I should be derelict in duty did I fail here to make grateful acknowledgment to many friends in the State and beyond, who, as subscribers and contributors, have made the continued publication of the journal possible. My especial thanks are due to Mr. Bryan, who, as associate editor, has fully and efficiently borne his share of editorial duties; to my scholarly friend, Prof. M. P. Burks, of Washington and Lee University, who, as State Reporter, has sup-

plied the official opinions and head notes, and upon whose aid and encouragement I have constantly drawn; and to the J. P. Bell Company, whose excellent mechanical taste has been apparent in every number, whose business management has kept the enterprise on a sound financial basis, and whose uniform courtesy deserves a more extended acknowledgment than I may here make.

My successor, Mr. Bryan, needs no introduction to the readers of the REGISTER. I bespeak for him, from them, an equal measure of that kindness and forbearance which I have learned so confidently to count upon.

The REGISTER will continue to be published by the J. P. Bell Company.

W. M. LILE.

*University of Virginia, April, 1903.*

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WE have twice referred (7 VIRGINIA LAW REGISTER, 455, and *ante*, page 680) to the *Matter of Hopkins' Will*—a New York case involving the law of revocation of wills by canceling. Our last reference to it was so recent that we need state only that the will of the testator having been discovered after his death with fifteen perpendicular lines drawn through the signature, the question arose as to who drew the lines—the testator or another party. The decision of the Surrogate, admitting the will to probate, having been reversed by the Court of Appeals of New York, the case was remanded for a trial of the issue by jury. We are now advised that that issue has been tried, and a verdict rendered in accordance with the finding of the Surrogate—namely, that the paper writing is the will of the deceased. This means, of course, that the jury believed from the evidence that the marks of cancellation, if made by testator, were not made *animo revocandi*, or, as this is hardly conceivable, that they were made by the hand of another. As the only party interested in preventing the probate was testator's son, twelve years of age, who was not charged with or suspected of having done the deed, the case upon this point will doubtless pass into the rapidly growing catalogue of unsolved mysteries—the ever-recurring illustrations of the principle that murder will not out.

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IN the course of his opinion in *Southern Railway v. Aldridge*, 43 S. E. 333, Judge Keith states that the Supreme Court of Appeals of Virginia has never decided that it is necessary for a traveler

approaching a railroad track to stop, look and listen. The Supreme Court of Pennsylvania, on the other hand, has recently carried its doctrine of "stop, look and listen" another step forward. It is now "stop, look, listen and continue to look and listen." In *Keenan v. Union Traction Co.*, 202 Pa. 107, 58 L. R. A. 217, it holds that where a traveler in the country stopped at a distance of thirty-five feet from a street railway and looked along the track for a distance of three hundred and nineteen feet, and seeing no car coming, allowed his horse, which was attached to a vehicle the sides of which were closed, to walk across the track without again looking for a car, and a collision ensued, with the car going ten or more times faster than the vehicle, he is guilty of contributory negligence, his duty being to continue to look until the track is reached; and that upon these facts the court should itself declare the contributory negligence, and direct a verdict for defendant. Mestrezat, J., protested against the latter ruling as "an invasion of the exclusive province of the jury, recognized time and again by this court," but he was alone in his dissent.

The path of the plaintiff in railway-crossing-collision cases in Pennsylvania is now practically blocked. The rulings of its court of last resort are in effect that before a plaintiff may recover, he must prove that he was guilty of contributory negligence—that he stopped, looked and listened for the car or train, and then seeing it approaching, crossed the track—and in that event the court will take care of the defendant. The only possible theory left open by the late decision, upon which a plaintiff may sustain an action, would seem to be that of an intentional or malicious trespass by the employees of the defendant.

Such a doctrine, with such necessary consequences, our Court of Appeals wisely states that it has never propounded, and, we think we can read between the lines, there is no immediate probability of its doing so.

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VARIANT are the views of courts as to innovations in practice without statutory license. Some adhere closely to the procedure of the centuries, while others adapt themselves to changed conditions, the necessities of the case and common sense, and from these elements, without waiting for legislative permission, they brew what they call their inherent power. As a result we have rules of court which in certain States have a notable breadth of scope and fullness of detail.

Two questions which were pronounced to be "of exceeding interest and great practical importance" were recently determined in *Fenno v. Primrose* (C. C. A. First Circuit), 119 Fed. 801. They related, first, to the power of a Federal court to appoint an auditor, master or commissioner, *in an action at law*, where the parties were entitled under the Constitution to a jury trial; and, second, to the power of such court to regulate the compensation of such auditor, and to determine where the burden of such compensation shall rest. Both questions were resolved in the affirmative. The opinion notes the fact that there is no Federal statute authorizing the reference of an action at law to an auditor, nor any statute providing for his compensation by placing the burden either upon the government or the parties, although there is a statute of Massachusetts (in which State the cause of action arose) authorizing the reference of an action where parties assent in writing. The court rules that in an action at law, where the accounts are so numerous and confused that it would be impossible for a jury to comprehend and intelligently decide it by reason of the complexity of the issues, unless and until they are simplified by a preliminary investigation, and where without it, it would be impossible for the court to administer justice, there is an inherent power in the court to direct such an inquiry before an officer designated by it, who shall call the parties before him *as a tentative tribunal*, to simplify the items and issues that the case may be intelligently presented to a jury—the cost to be taxed as the court shall deem just, against either or both of the parties, and not necessarily against the loser.

Inasmuch as the nature of the preliminary investigation is distinctly declared to be tentative only, the right of trial by jury being as distinctly recognized as reserved to the parties, the propriety of the ruling seems manifest upon what we may call the *argumentum ab convenienti*. Cases of account are constantly submitted to juries where bewilderment and confusion alone remain at the conclusion of the trial, and the wonder is that the twelve men can agree upon anything, for which any two of the twelve would give the same reasons.

A reform in the practice looking to the commencement of a jury trial in this class of cases with a preliminary report of a master as the basis of the inquiry has much to commend it.

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If any of our readers desires to purchase a ready-made law school, consisting of sundry desks, chairs, and blank diplomas, the opportunity is offered, on unusually favorable terms, by Dean Farr, Ph. D., LL. M., LL. D., of Nashville, Tennessee, as announced in a circular letter which he has recently issued. The circular is addressed to the editor personally, but doubtless the offer was impersonal, and the editor will be glad to transfer the option to any reader who is ambitious to own a law school.

The school in question is the Nashville College of Law. It is an institution young in years, having been incorporated, as the circular informs us, in 1899, but it is probably the best known educational institution in the country. Not only have its praises been energetically sung by the celebrated Dean's own literature, but poets have immortalized it in verse, and the *American Law Review* has devoted several pages to a detailed account of Dean Farr and his remarkable work.

One of the most striking bits of literature accompanying the Dean's circular is a poetical gem set to music—in which composition poet and composer vie with each other in paying homage to the Nashville College of Law. Our readers shall have the poem for their scrap books, but we cannot here reproduce the music. It is said, however, that the composer failed not to catch the spirit of the words, and the two pieces are of a kind—or, as a lesser poet has expressed it, the result is "perfect music unto noble words." Now for the poem :

"Down in the beautiful Southland,  
In a spot so dear to one and all,  
Stands our noble Alma Mater,  
The Nashville College of Law.

CHORUS—"Sound its praises, sing them ever,  
Help it onward, loud the story tell,  
Welcome to thee our Alma Mater,  
Welcome all welcome, farewell.

"Down in our sunny Tennessee,  
'Midst hills, music, echo and sound,  
Where all in nature smiling seems,  
Stands the pride of an Athens town."

We must not omit the name of the authoress of these breathing thoughts and burning words. She is Pearl M. Kennedy, LL. B. That Pearl possesses the divine afflatus appears in the very structure of her verse. The bold originality of the rhymes, and the fine frenzy expressed by the untamed metre, attest it.

This song is said to be so popular among the members of the

Nashville bar that they sing nothing else at their gatherings. We cannot, however, vouch for the story that the local bar proposes that ability to sing the song with becoming expression, and especially with an appropriate pause between the "welcome" and the "farewell," in the last line of the chorus, shall be made a *sine qua non* of admission to the bar in Tennessee.

Since the receipt of the circular letter referred to, a valued subscriber has sent us further evidence of the enterprise of Dean Farr, and of his desire to extend the beneficent influence of the Nashville College of Law. This is again in the shape of a circular letter. In this the Dean offers to confer upon the addressee, for the small sum of ten dollars, payable in advance, the honorary degree of Doctor of Laws. The offer is made doubly attractive by the information that "the college diploma bears a fac-simile of the corporate and State seal, is lithographed upon parchment, carefully prepared sheepskin, suitable to place in the home or office, and is intended as a testimonial of honor, prestige, efficiency and worth." The circular extends to the doctor elect, in advance, "our earnest congratulations as a co-worker in the domain of the great profession of the law"—congratulations that such merited laurels are now placed upon his brow, and at such small cost. The circular does not say so, in terms, but doubtless wholesale rates may be secured, in case several Virginia lawyers, desiring the honor, will club together and make application to the Dean.

The circular closes with an important post-script, notifying candidates that the board of trustees will meet pretty soon, and remittances should be made promptly. For the convenience of the candidate, a ready-filled application for a postoffice money order for ten dollars accompanies the circular—thus making smoother still the road to the possession of the coveted prize, namely, "lithographed parchment, carefully prepared sheepskin, suitable to frame and place in the home or office—a testimonial of honor, prestige, efficiency and worth."

The wonder is how all this, with the song thrown in, can be supplied for the paltry sum of ten dollars.

Gentlemen of the Virginia bar, if any of you claim an LL. D. under two years old, we challenge the title. Farr is abroad in the land, and recent Doctors of Laws are under just suspicion. With Farr *redivivus*, new legal doctors must show their hands, and trace title from a source far removed from Farr.